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March 24, 2004

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BY UPS & EXPRESS MAIL

Jeff S. Jordan, Esq.
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 5405

Dear Mr. Jordan:

On behalf of my clients, Hynes for Senate ("the Campaign"), Jeffrey C. Wagner, as the Campaign's treasurer, and Daniel W. Hynes, I write in response to your correspondence of February 3, 2004 regarding the Complaint in the above referenced matter. For the reasons set forth below, the Commission should decline to take any further action regarding this Complaint because it is completely without any legal or factual justification or basis.

1. The Complaint's Allegations Are Insufficient Because It Does Not Allege that the Campaign Knowingly Accepted an Illegal Contribution.

The Complaint's allegations can be summarized as follows. First, it alleges that a number of individuals who are alleged to be employees of Apex Healthcare, Inc. ("Apex") or relatives of its of its "principal officer" – or in two cases neither – made contributions to the Campaign. Second, it alleges that the Complainant "is informed and does believe" – without setting forth the basis for that belief - that these contributors "lack[] the personal funds which would enable [them] to make the political campaign contributions in the amounts reported." Third, it alleges that the Complainant "is informed and does believe that these contributions were

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not the personal contributions of the stated donors but, instead, . . . [were] made in the name of another person.” Again, it does not set forth the basis for that belief. This is the sum of the Complaint’s allegations.

The Complaint is fatally flawed for any number of reasons, some of which are discussed below. The most glaring flaw, as against the Campaign and Mr. Hynes, is its failure to even allege that the Campaign knowingly accepted these allegedly prohibited contributions.

Commission regulations provide that “No person shall . . . *knowingly* accept a contribution made by one person in the name of another.” 11 C.F.R. §110.4(b)(1)(iv) (emphasis added). *See also* 2 U.S.C. § 441f (“no person shall *knowingly* accept a contribution made by one person in the name of another person”) (emphasis added). Nevertheless, the Complaint does not even allege – and indeed could not truthfully allege – that the campaign knowingly received any prohibited or illegal contributions. For this reason alone, the Complaint fails to allege that the Campaign or Mr. Hynes violated Commission regulations.

Moreover, the Complaint does not even allege – and could not truthfully allege – that the Campaign *should have known* or that the Campaign had any indication whatsoever that any of these contributions were made in the name of another person or otherwise improper.¹ In fact, the Campaign has never had any indication whatsoever that there may have been something inappropriate about the contributions identified in the Complaint. The Campaign has a rigorous vetting process that it uses in connection with all substantial contributions that it receives. This

¹ This does not suggest that the Complaint would be sufficient if it did allege that the Campaign should have known a contribution was prohibited. As discussed above, the regulations prohibit the *knowing* receipt of such a contribution. *See* 11 C.F.R. §110.4(b)(1)(iv). We raise this point only to show just how short the Complaint falls of alleging an actual violation

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vetting process did not identify anything suspicious about these contributions. Indeed, as set forth in the attached affidavit, the Campaign has never knowingly accepted any contribution in the name of another, or had any reason to believe that it was doing so with regard to these contributions. *See* Exhibit 1 hereto (Affidavit of Matthew J. Hynes). Thus, it is evident – and the Complaint concedes by its silence on this point – that the Campaign did not knowingly accept any prohibited contributions.

2. The Complaint's Allegations Are Insufficient Because It Does Not Include the Required Supporting Information.

The allegations that form the core of the Complaint – that certain contributions in question were made in the name of another – are also fatally flawed because the Complaint does not provide the required supporting information. For these reasons, the Complaint does not adequately allege even that the contributions were prohibited.

Commission regulations governing complaints provide in relevant part that:

“Statements [in a complaint] which are not based upon personal knowledge should be accompanied by an identification of the source of information which gives rise to the complainant's belief in the truth of such statements,” 11 C.F.R. §111.4(d)(2); and

“[The Complaint] should be accompanied by any documentation supporting the facts alleged if such documentation is known of, or available to, the complainant.” 11 C.F.R. §111.4(d)(4).

The Complaint fails to comply with either of these requirements. *First*, most of its allegations – and almost all of its core allegations – are made on information and belief. For instance, all of its repeated allegations that the identified contributors lack the personal assets to make contributions in the stated amounts are made on information and belief. *See* Compl. at ¶¶

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7-12, 14-16. Additionally, the key allegation -- that the contributions were made in the name of another -- is made on information and belief. *See* Compl. at ¶ 17.

However, the Complaint fails to state the basis for these allegations, as the regulations require. In the first instance -- regarding the allegations that the contributors lacked sufficient funds -- the only basis set forth for these allegations is "an investigation of [the contributor's] personal assets and lifestyle." No other information about these "investigations" or their results is provided. This is clearly insufficient under 11 C.F.R. §111.4(d)(2). Moreover, in the second instance -- regarding the allegations that the contributions were made in the name of another person -- the only basis identified for the allegation is "the pattern and practices of some of these same individuals." Again, the Complaint is totally silent as to what these supposed "patterns and practices" are. This too is clearly insufficient under 11 C.F.R. §111.4(d)(2).

Second, with regard to all of these allegations, the Complainant has failed to provide any documentation whatsoever which supports these allegations. Again, the Complaint refers repeatedly to "investigation[s] of [the] apparent personal assets and lifestyle[s]" of various contributors. Compl. at ¶¶ 7-12, 14-16. However the Complainant has failed to provide any detail of or basis for these allegations, and fails to provide any documentation whatsoever to support these allegations.² This failure to provide any documentation, while telling about the

² Dawn Burdelik and Kin Cheung were both identified as "executives" at Apex and Sharon Linares was identified as a "director" at Apex in the Campaign's Form 3 quarterly reports to the Commission. Nevertheless, the Complaint alleges that Burdelik, Cheung, and Linares are all "clerical employees" of Apex. Compl. at ¶¶ 10-12. Significantly, these allegations are made affirmatively, and not merely on information and belief. However, the Complaint does not offer any documentation or identify any source for the allegation that each is a "clerical employee" of Apex, rather than the positions identified on the Campaign's quarterly reports.

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validity and recklessness of the Complaint's allegations, also fails to satisfy the requirements of 11 C.F.R. §111.4(d)(4).³

4. The Commission Should Decline to Take Any Further Action on This Complaint on the Basis of Fairness and Laches.

Finally, the Complaint should be dismissed because it is obviously politically motivated and timed to maximize its political impact. The evidence of this is overwhelming. It was filed on January 28, 2004, less than two months before the primary election. This came despite the fact that it is based on certain events, many of which occurred in March 2003 – and were publicly available beginning in April 2003. Indeed, the last event identified in the Complaint occurred in September 2003 and was publicly available in October 2003. The fact that the Complainant sat on this information and waited until late January 2004 – when the primary campaign was in full swing – clearly demonstrates the political motivation behind the Complaint.

This political motivation is also starkly demonstrated by the fact that the Complaint was provided to the media on the very day on which it was filed. See David Mendell, *Hynes Says Charge That He Laundered Funds Ridiculous*, CHI. TRIB., Jan. 29, 2004, Metro Section at 1, 2004 WL 67380867 (a true and correct copy is attached hereto as Exhibit 2). Moreover, this provision of this Complaint to the media is a blatant violation of the Commission's regulations, which provide that: "*no Complaint filed with the Commission . . . shall be made public by the Commission or by any person or entity without the written consent of the respondent with respect to the complaint was filed.*" 11 C.F.R. §111.21(a) (emphasis added). Needless to say,

³ Indeed, the best example of the Complaint's recklessness and inaccuracy may be its failure to get even the Campaign's *mailing address* correct. Compare Compl. at ¶ 4 (listing address as "1520 North Wells Street") with Campaign's various Commission filings (listing address as "1525 North Wells Street"). This error, while of questionable materiality, is certainly telling about the level of care and investigation that went into the Complaint.

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the Campaign never consented to publicizing this politically motivated Complaint; in fact, the Campaign first learned of the Complaint on January 28, 2004, the day on which it was filed, when it received an inquiry from a reporter who had already been provided a copy of the Complaint. *See* Ex. 1 (Hynes Aff.) at ¶ 4. This activity, including the violation of Commission regulations, clearly demonstrates the political motivation behind both the Complaint and the timing of its filing.⁴

5. Conclusion.

For the reasons set forth above, the Campaign and Daniel W. Hynes respectfully request that the Commission take no further action on this Complaint.

Respectfully Submitted,



Michael K. Forde

cc: Michael J. Kasper, Esq.

⁴ The Campaign has identified previously the connection between the nominal Complainant and one of the Campaign's opponents, Hull for Senate. *See, e.g.,* David Mendell, *Hynes Says Charge That He Laundered Funds Ridiculous*, CHI. TRIB., Jan. 29, 2004, Metro Section at 1, 2004 WL 67380867 (attached hereto as Exhibit 2).

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BEFORE THE FEDERAL ELECTION COMMISSION

GERALD L. JAECKS,

Complainant,

vs.

No. MUR 5405

DANIEL W. HYNES, HYNES FOR SENATE,
APEX HEALTHCARE, JAMES CHAO,
CHARISSA CHAO, GRACE CHAO, PHILIP
CHAO, DAWN BURDELIK, KIN S. CHEUNG,
SHARON LINARES, LAWRENCE YIP, AMY
YUEN, MONICA FLETCHER, and DOUGLAS
FLETCHER,

Respondents.

AFFIDAVIT OF MATTHEW J. HYNES

MATTHEW J. HYNES, duly sworn on oath on personal knowledge, hereby deposes and states as follows:

1. I am the Campaign Manager for Hynes for Senate ("the Campaign").
2. I have never had any conversations or communications with James Chao or any agent of Apex Healthcare, Inc. ("Apex") in which: (a) I was informed that Mr. Chao or Apex may have reimbursed contributors to the Campaign or otherwise made contributions in the name of another; or (b) I indicated that the Campaign would accept a contribution made in the name of another. To the best of my knowledge, the Campaign has never knowingly accepted any contribution in the name of another.
3. I have discussed this matter with the other representatives of the Campaign who are substantially involved in soliciting and receiving contributions to the Campaign. On information and belief, no other representative of the Campaign has ever (a) been informed that Mr. Chao or Apex may have reimbursed any contributors to the Campaign, or otherwise made



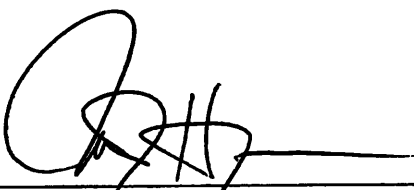
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contributions in the name of another; (b) indicated that the Campaign would accept contributions in the name of another; or (c) knowingly accepted any contributions in the name of another.

4. The first time that anyone at the Campaign learned of the Complaint was on January 28, 2004, when a Chicago Tribune reporter faxed a copy of the Complaint to the Campaign and telephoned to inquire about it.


FURTHER AFFIANT SAYETH NOT.

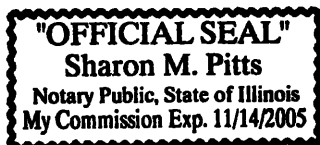
Dated this 24th Day of March, 2004.


MATTHEW J. HYNES

SWORN and SUBSCRIBED to before me

this 24th day of March, 2004.


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Thursday, January 29, 2004

Metro

Hynes says charge that he laundered funds ridiculous
By David Mendell, Tribune staff reporter.

A Northwest Side retiree has filed a complaint with the Federal Elections Commission alleging that the owner of a Naperville health care firm used employees to improperly funnel up to \$60,000 in contributions to Democratic U.S. Senate candidate Daniel Hynes. Also Wednesday, Hynes, the state comptroller, fended off questions about recent charges that he laundered contributions from his state campaign fund into his Senate campaign fund using Chicago Democratic Party ward organizations as a conduit. Such an action would be a violation of federal campaign finance rules.

"It's absolutely ridiculous, absolutely ridiculous," Hynes said Wednesday when reporters asked about the assertions after a candidate forum held by the City Club of Chicago. "I have been supporting Democratic organizations and Democratic candidates for years."

The FEC complaint, a copy of which was obtained by the Tribune, involves contributions listed on Hynes' campaign disclosure reports as coming from employees of Apex HealthCare Inc., owned by Hynes supporter James Chao. The complaint contends that either Chao or his company were the real source of the contributions.

Federal rules bar businesses from making campaign donations, and individuals are restricted to giving \$12,000 to any Democrat running for the U.S. Senate in Illinois. The limits are different from campaign to campaign under the new McCain-Feingold campaign finance reform law.

The complaint, filed by Gerald L. Jaecks of the 2500 block of West Pensacola Avenue, said the employees do not appear to have the financial means to donate thousands of dollars each. Several live in modest homes in the southwest suburbs of Worth and Chicago Ridge.

"These donors knowingly made prohibited contributions of Apex corporate funds and knowingly illegally routed these contributions through themselves as conduits--made in the name of another person in violation of the Federal Election Campaign Act," the complaint states.



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One of the Apex workers is Dawn Burdelik, who according to Hynes' disclosure statements, contributed \$6,000.

Interviewed briefly on the doorstep of her home in Worth, Burdelik acknowledged making some political contributions and "those figures sound about right." She refused to answer more questions and shut her front door.

A Hynes spokeswoman said Burdelik and another Hynes donor, Sharon Linares, hold high-ranking management jobs at Chao's company and have "substantial incomes."

Jaacks, 68, who described himself as a "concerned voter," said he has worked for an independent voters group and as a volunteer for various political candidates. He said he filed the complaint after the campaign records and other information came to him and he "was willing to sign off on it."

"I have been interested in this area for a long time and I have done a lot of research into various campaigns," Jaacks said. "I hope the FEC looks into it. Illinois politicians are notorious for getting campaign contributions from contractors and other special interests."

Jaacks declined to say who provided the information or whether it came from one of Hynes' opponents. But Jaacks serves on the board of the Public Access Project, a political watchdog group, along with Richard Means, a member of the campaign staff of one of Hynes' opponents, former securities trader Blair Hull.

Chris Mather, a Hynes spokeswoman, accused Hull of getting a proxy to unfairly try to dirty up Hynes.

"Unfortunately, this is what happens when someone has \$40 million to spend on a political campaign," Mather said, referring to Hull, a multimillionaire who has vowed to pour vast resources into his campaign. "It pays to take the low road."

Jason Erkes, a Hull spokesman, said Jaacks is "not connected to the Hull campaign in any way."

The FEC complaint process allows Hynes to respond to the complaint before the commission decides whether to open an investigation, a process that could take months.

On Wednesday, at the City Club forum, Hynes defended his campaign against assertions by the St. Louis Post-Dispatch that he had funneled thousands of dollars from his state campaign fund to his Senate fund.

Hynes distributed a detailed flier to reporters that declared he had stopped contributing to other candidates and Democratic organizations three months after filing his statement of candidacy for the Senate.

"This is a simple story of Democrats supporting other Democrats," the flier stated.

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"The issue as it was written about has no merit to it," Hynes said. He added that, as the March 16 primary nears, "negative campaigning" is seeping into the race, which has largely been free of controversy.

PHOTO: Comptroller Daniel Hynes (center) talks with state Sen. Barack Obama at a forum for Senate candidates Wednesday held by the City Club of Chicago. At left is candidate Gery Chico. Tribune photo by Abel Uribe.
: Campaign 2004.

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